

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

JASON LEE VAN DYKE,)	Civil Action No.: 2:17-cv-745
)	
<i>Plaintiff,</i>)	
)	
v.)	(Jury Trial)
)	
MOCKINGBIRD PUBLISHING CO.)	
and GERARD BELLO II,)	
)	
)	
<i>Defendants.</i>)	Notice of Removal

**DEFENDANT MOCKINGBIRD PUBLISHING CO.'S
and GERARD BELLO II'S NOTICE OF REMOVAL**

TO THE CLERK OF THE COURT:

1. PLEASE TAKE NOTICE that defendants Mockingbird Publishing Co. (Mockingbird) and Gerard Bello II hereby remove the state action described as Cause No.: CV-2017-02365 from the County Court at Law No.: 2, Denton County, Texas to the United States District Court for the Eastern District of Texas, Marshall Division wherein within said federal court's jurisdiction said county court is located.

2. Pursuant to LOCAL RULE CV-81:

(c) The removing party or parties shall furnish to the clerk the following information at the time of removal:

Notice of Removal

(1) a list of all parties in the case, their party type (e.g., plaintiff, defendant, intervenor, receiver, etc.) and current status of the removed case (e.g., pending, dismissed);

Jason Lee Van Dyke is the plaintiff.

Mockingbird Publishing Co. is a defendant.

Gerard Bello Jr. II is a defendant.

The current status is that the state court action is pending. It was filed September 15, 2017. An amended petition was filed October 9, 2017. Defendant Mockingbird was served through the Texas Secretary of State at the earliest October 18, 2017. An answer by Mockingbird was filed November 13, 2017.

(2) a civil cover sheet and certified copy of the state court docket sheet; a copy of all pleadings that assert causes of action (e.g., complaints, amended complaints, supplemental complaints, petitions, counter-claims, cross-actions, third party actions, interventions, etc.); all answers to such pleadings and a copy of all process and orders served upon the party removing the case to this court as required by 28 U.S.C. Section 1446(a);

See attached exhibits.

(3) a complete list of attorneys involved in the action being removed, including each attorney's bar number, address, telephone number, and party or parties represented by him/her;

Plaintiff Jason Lee Van Dyke is an attorney licensed in Texas, Colorado, Georgia, and Washington D.C. and is proceeding *pro se*. Texas Bar No.:24057426; Colorado Bar No.: Unknown; Georgia Bar No.: Unknown; Washington D.C. Bar No.: Unknown; 108 Durango Drive, Crossroads, Texas 76227; 469.964.5346

Defendant Mockingbird Publishing Co. and Gerard Bello II are represented by Randall L. Kallinen; member of the U.S. Eastern District of Texas bar; State Bar of Texas No.: 00790995, 511 Broadway Street, Houston, Texas 77012, 713.320.3785

(4) a record of which parties have requested trial by jury (this information is in addition to filing a separate jury demand pursuant to Local Rule CV-38(a));¹ and

It does not appear that plaintiff has requested a jury trial. Defendant Mockingbird did request a jury trial in the Denton County court. Defendant Bello did not request a jury trial.

(5) the name and address of the court from which the case is being removed.

County Court at Law No. 2, Denton County, Texas
Denton County Courts Building
1450 East McKinney Street
Suite 4325 (4th Floor)
Denton, TX 76209-4524

(d) Any motions pending in state court made by any party will be considered moot at the time of removal unless they are re-urged in this court.

There are no motions pending.

3. The earliest date upon which Mockingbird was served a copy of the complaint and summons was October 18, 2017. The earliest Gerard Bello II received a copy of the lawsuit was October 24, 2017. A copy of the Summons and complaint are attached as Exhibit 1.² A copy of Mockingbird's answer in the state court is attached as Exhibit 2.

4. This action is a civil action which the Court had original jurisdiction under 28 U.S.C. Section 1332(a), and is one which may be removed to this Court by defendant(s) pursuant to the provisions of 28 U.S.C. Section 1441 et seq. in that

¹While defendant Mockingbird had requested a jury trial in the Denton County Court, Mockingbird does not request a jury trial in this Court

² All exhibits are incorporated by reference as is fully set forth where referenced.

Plaintiff Jason Lee Van Dyke is a citizen of the State of Texas and defendant Mockingbird is incorporated in Ohio and has its principal place of business in Ohio. Defendant Gerand Bello II is a citizen of Ohio. There is complete diverse citizenship between the plaintiff and defendants.

5. Furthermore, the amount in controversy exceeds \$75,000 as set forth in paragraph 2.4 of the complaint (Plaintiff's First Amended Petition) that subject matter jurisdiction is appropriate because "Plaintiff seeks recovery of monetary damages within the jurisdictional limits of this Court" as the Denton county court has jurisdiction in "Civil cases in which the matter in controversy exceeds \$500 but does not exceed \$200,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees and costs []" Also, in paragraph 1.1 sets forth that "Plaintiff seeks damages in the amount of \$100,000 or less..." and paragraph 4.1 sets forth that plaintiff seeks "nominal damages, plus general damages of *at least* \$60,000.00" plus "prejudgment and post judgment interest" and "all costs of court" and "be granted further relief." In addition Defendants assert that a libel lawsuit alleging four counts of libel per se, subject to the damages evidence, as set forth in **Exhibit 1** can easily result in a judgment in excess of \$75,000.00. Also, since the jurisdictional limits of County Court at Law No.: 2, Denton County, Texas includes matters in controversy which exceed \$500 but does not exceed \$200,000, excluding interest, statutory or punitive damages and penalties, and attorney's fees

and costs []” removal is appropriate. See *DeAguilar v. Boeing Co.*, 11 F.3d 55, 58 (5th Cir. 1993). Furthermore, see **Exhibits 8, 9 and 10** regarding libel jury awards of \$58 million, \$13 million and \$500,000. Additionally, the undersigned lawyer is aware in his profession of several Texas libel jury awards of over \$100,000. Given the foregoing defendants reasonably believe the amount in controversy exceeds the jurisdictional limit.

6. All defendants, both represented by undersigned counsel, join in and consent to this removal.

7. Defendants Mockingbird Publishing Co. and Gerard Bello II requests this state court action removed and placed upon this Court’s docket and requests all other relief to which they show themselves entitled.

Respectfully Submitted,
KALLINEN LAW PLLC

/s/ Randall L. Kallinen

Randall L. Kallinen

Member, U.S. Eastern District of Texas Bar

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Counsel for Mockingbird Publishing Co.
and Gerard Bello II

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the above and foregoing document on counsel for all other parties on this 16th day of November 2017, at the address below using the method listed below:

Jason Lee Van Dyke, atty. (Via email and/or facsimile)
108 Durango Drive
Crossroads, Texas 76227

/s/ Randall L. Kallinen
Randall L. Kallinen